



1 The United States' sentencing position is based on the attached memorandum of  
2 points and authorities, the files and records in this case, and such further evidence and  
3 argument as the Court may permit.

4 Dated: June 17, 2021

Vanessa R. Waldref  
United States Attorney

6 *s/ David M. Herzog*  
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David M. Herzog  
Assistant United States Attorney

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   **I. Introduction**

3                   After illicitly downloading pornographic images of children for years, such that he  
4 sustained a previous state conviction for engaging in child pornography conduct,  
5 Defendant Brian Knight (“Defendant”) has pleaded guilty to a single federal count of  
6 Possession of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A), (b)(1).  
7 Defendant’s personal history and characteristics include several specific, troubling factors  
8 that warrant an 84-month sentence. In addition to apparently not learning anything from  
9 his prior child pornography conviction or prison time, Defendant has demonstrated an  
10 ongoing sexual interest in children by seeking to gain in-person access to autistic children  
11 through a program he invented – under an alias – called “Fish4Kids,” which never  
12 actually provided any aquariums to anyone. He also lied to law enforcement, wiped his  
13 devices to hide the true volume of his child pornography collection, and bookmarked  
14 multiple child rape stories, including one called “baby Sex Is the Best.tx.” Completely  
15 separate from his sexual interest in children, he has also engaged in multiple domestic  
16 violence (“DV”) assaults, interference with DV reporting, and cyberstalking/threats to  
17 make people “suffer.”

18                  In short, while the Court has sometimes expressed concerns about lengthy  
19 sentences for child pornography offenders who are in the federal system for the first time,  
20 this particular Defendant is *not* the kind of no-prior-criminal-history, no-other-evidence-  
21 of-sexual-interest-in-children, first-time-offender for whom a sentence as low as 36  
22 months, or even 60 months, is warranted. His Guidelines range is 210-240 months, and it  
23 should be.

24                  Nevertheless, the United States recognizes that there is some mitigation present in  
25 the Presentence Investigation Report (“PSIR”), which is the reason that the United States  
26 resolved this case at a Rule 11(c)(1)(C) range of 36-84 months (3-7 years), rather than at  
27 the 60-month (5-year) mandatory minimum or Guidelines range of 210-240 months  
28 (17.5-20 years) that would otherwise apply to Defendant based his offense conduct.

Indeed, Defendant's particular mitigating factors (he reports having suffered abuse as a child, two strokes, traumatic brain injury, epilepsy, and multiple suicide attempts, among other things) are the very reasons that the United States has agreed to recommend a sentence of only 84 months—more than *10 years below* the low end of Defendant's Guidelines range of 210 months. When the United States recommends a variance so far beneath a Defendant's Guidelines range, it urges the Court not to depart even further below the Defendant's properly-calculated range. Because the Guidelines are the "starting point" and "initial benchmark" for sentencing, *United States v. Carty*, 520 F.3d 984, 991-92 (9th Cir. 2008), and the United States is obliged to seek a sentence that will be sufficient but not greater than necessary to avoid sentencing disparity, punish, protect the community, and deter, the United States recommends a sentence of 84 months, to be followed by a lifetime of Supervised Release.

## II. Facts

The relevant facts are set forth in the *Offense Conduct* section of the PSIR, ECF No. 64, ¶¶ 8-18, and the *Factual Basis* section of Defendant's Plea Agreement, ECF No. 49, ¶ 6. Defendant is a sophisticated technology user who has been engaging in recidivist child exploitation conduct since at least 2009. ECF No. 64, ¶¶ 59-64. Troublingly, there was sufficient probable cause for him to be charged with first degree rape of a child based on his daughter's disclosures that he had repeatedly forced her to perform oral sex on him. *Id.* He was acquitted of that charge. *Id.* It is unclear whether the trial jury refused to believe the child victim, convicted him of child pornography possession as a way of splitting the baby in the jury room, or came to some other conclusion about the evidence presented in that state case; regardless, he was sentenced to 14 months in custody. *Id.*

Defendant also had no fewer than six prior violation processes related to noncompliance with his community supervision. *Id.* The majority of those instances of noncompliance came from his failure to participate in sex offender therapy, which should concern the Court greatly.

1       The Court might well think such sanctions would deter Defendant from engaging  
2 in future child pornography conduct, but it did not. In 2019, FBI downloaded files from  
3 Defendant that were consistent with his daughter's accusation, insofar as they  
4 demonstrate Defendant's sexual interest in both the rape of children and incest. *Id.* One  
5 such file was particularly chilling, given his daughter's disclosure: "Cp 6Yo-7Yo Fuck  
6 Uncle Pthc – Open-Nobull Family Fun Dad Teaches Bro And Sis Abt 9,10 Kid Sex  
7 Incest Pedophilia Boy Girl 12.38.mpb." ECF No. 64, ¶ 10. The title appeared to  
8 accurately describe the kind of child pornography Defendant sought out, searched for,  
9 downloaded, and possessed:

10      *The video depicts a named man masturbating into the anus of a naked  
11 prepubescent child. The man then appears to penetrate the child's anus with  
12 his penis, the man roughly flips over the child from being on her hands and  
13 legs, over onto her back, and it can be seen the child is a female. The man  
14 masturbates and rubs his penis on the girl's vagina then attempts to penetrate  
15 her anus. The video then changes to depict a prepubescent boy orally  
copulating a prepubescent girl. The prepubescent girl masturbated the  
prepubescent boy, then orally copulates him.*

16      *Id.* Other similar videos were also recovered from his digital devices. ECF No. 64, ¶ 12.

17      When FBI executed a search warrant at Defendant's residence, he not only failed  
18 to take responsibility for his conduct; he out-and-out lied to investigators by repeatedly  
19 denying that he used his sophisticated digital and computer equipment to download child  
20 pornography, including when he was confronted about FBI having downloads from him  
21 as early as 2017. ECF No. 64, ¶ 14-18. He also clearly wiped his devices of child  
22 pornography, bookmarked multiple child rape stories, and ran what appears to be a sham  
23 foundation so he could get access to autistic children. *Id.*

24      Based on all of the information before the Court, a sentence of 84 months, but no  
25 lower, is appropriate for *this* Defendant based on *his* history and characteristics, and *his*  
26 offense conduct.

1 **III. The Presentence Report**

2 For purposes of calculating the appropriate range under the United States  
3 Sentencing Guidelines (the “Guidelines”), the United States concurs with the Probation  
4 Office that Defendant’s final adjusted offense level is Level 35. ECF No. 64, ¶ 40. The  
5 Probation Officer concluded that Defendant has 4 criminal history points, placing him in  
6 Criminal History Category III. ECF No. 64, ¶ 71. Defendant’s Guidelines properly-  
7 calculated Guidelines range is 210-240 months. ECF No. 64, ¶ 120.

8 **IV. The United States’ Sentencing Recommendation**

9 The United States respectfully recommends a significantly-below-Guidelines  
10 sentence of 84 months (7 years) in custody, a lifetime of supervised release, no fine,  
11 restitution as requested, and appropriate special assessments. The United States submits  
12 that such a sentence is sufficient, but not greater than necessary, to achieve the sentencing  
13 goals set forth at 18 U.S.C. § 3553.

14 **A. Nature and Seriousness of the Offense and Respect for the Law**

15 Defendant’s sentence should be significant. His offense was serious and  
16 longstanding, he demonstrated consciousness of guilt by shredding his child  
17 pornography, he showed disregard for the law both by lying to law enforcement officers,  
18 and despite being caught engaging in child pornography conduct on at least one prior  
19 occasion, he has continued to act on his sexual interest in children by downloading child  
20 pornography. He also appears to have created a fake “foundation” for the sole purpose of  
21 giving him access to autistic children, presumably for potential abuse.

22 It is perhaps possible to become inured to the harms caused by child pornography,  
23 given how many child pornography cases are prosecuted. But it is important to  
24 remember that the collection and distribution of child pornography is devastating  
25 conduct. Basic human decency – and respect for the victims depicted in Defendant’s  
26 collection – demands that the United States, the Court, and Defendant all acknowledge  
27 that child pornography constitutes not only a past harm, but an ongoing harm to the  
28 children depicted.

1      Defendant has participated in and created a market for additional images of child  
 2 abuse. As the Supreme Court has recognized, the prevention of sexual exploitation and  
 3 abuse of children is an “objective of surpassing importance.” *New York v. Ferber*, 458  
 4 U.S. 747, 756 (1982). Unsurprisingly, “[t]he legislative judgment as well as the  
 5 judgment found in the relevant literature, is that the use of children as subjects of  
 6 pornographic materials is harmful to the physiological, emotional, and mental health of  
 7 the child.” *Id.* at 758. This harm is caused not only by the abusive acts perpetrated  
 8 during the production of child pornography, but also the enduring record of the abuse:

9      [T]he materials produced by child pornographers permanently record the  
 10 victim’s abuse. The pornography’s continued existence causes the child  
 11 victims continuing harm by haunting the children in the years to come. The .  
 12 .. ban on possession and viewing encourages the possessors of these materials  
 13 to destroy them. Second, encouraging the destruction of these materials is  
 14 also desirable because evidence suggests that pedophiles use child  
 15 pornography to seduce other children into sexual activity.

16      *Osborne v. Ohio*, 495 U.S. 103, 111 (1990) (citations omitted). A sexually abused child  
 17 who has been photographed must go through life knowing that these images are  
 18 circulating within the mass distribution system for child pornography. *Ferber*, 458 U.S.  
 19 at 758 n.9 & 760 n.10 (discussing harms caused by child pornography).

20      The Ninth Circuit has rejected the argument that child pornography is a victimless  
 21 crime and has recognized that child pornography victimizes the sexually exploited  
 22 children depicted in the images:

23      After all it was the children depicted -- and not society at large -- who were  
 24 acted on and adversely affected, who oftentimes were forced to participate in  
 25 the production of the pornography in which [Defendant] traded, who were  
 26 injured (both physically and psychologically) as a result of [Defendant’s]  
 27 patronage of the porn industry, who were sacrificed to satisfy [Defendant’s]  
 28 curiosities, who were subjected to the crudest form of oppression, hardship,  
 and mistreatment at the hands of pornography producers and photographers,  
 and whose lives were quite possibly destroyed in the process.

29      *United States v. Boos*, 127 F.3d 1207, 1210 (9th Cir. 1997).

1       The Ninth Circuit has specifically found that the legislative history of the child  
 2 pornography statutes indicates that Congress sought to protect the children involved in  
 3 the production of child pornography by prohibiting its distribution and possession:

4           (1) Congress determined that child pornography is a multi-million dollar  
 5 industry in which sexually explicit depictions of children are bought, sold, and  
 6 traded interstate; (2) Congress decided to “stamp out” the market for child  
 7 pornography by criminalizing the production, distribution, receipt, and  
 8 possession of child pornography; and (3) Congress thought it could strike a  
 9 blow to the industry by proscribing possession of child pornography “because  
 10 those who possess and view child pornography encourage its continual  
 11 production and distribution.” 136 Cong. Rec. at S4730.

12       *United States v. Adams*, 343 F.3d 1024, 1032 (9th Cir. 2003).

13       Thus, based on his distribution, receipt, and possession of images, Defendant  
 14 participated in conduct that “is intrinsically related to the sexual abuse of children” both  
 15 because “the distribution network for child pornography must be closed if the production  
 16 of material which requires the sexual exploitation of children is to be effectively  
 17 controlled,” and because it constitutes a “permanent record of the children’s participation  
 18 and the harm to the child is exacerbated by their circulation.” *Ferber*, 458 U.S. at 759.  
 19 Time and again, the Supreme Court has emphasized that the evil wrought by the  
 20 distribution of child pornography is not merely instrumental; Defendant’s conduct  
 21 guarantees that the underlying abuse is “in effect repeated” since the victim knows “her  
 22 humiliation and hurt were and would be renewed into the future as an ever-increasing  
 23 number of wrongdoers witnessed the crimes committed against her.” *Paroline v. United*  
 24 *States*, 134 S. Ct. 1710, 1717 (2014). Thus, Defendant’s consumption and collection of  
 25 child pornography, in addition to perpetuating the trauma and shame suffered by the  
 26 victims, further bolstered a market that induces the exploitation of children.

27       Defendant indisputably created and curated a significant collection of images,  
 28 beyond the mere 600 sufficient to trigger the highest quantity enhancement under the  
 Guidelines, as he admitted. But here, where Defendant used sophisticated programs to  
 shred his collection, neither the United States, nor the Court, nor probably even

1 Defendant, can state with any accuracy how big his collection actually was. Regardless,  
2 it is clear that Defendant spent significant time searching for, downloading, and viewing  
3 the child pornography files he amassed, using them for his own gratification and then  
4 deleting them to evade detection by law enforcement.

5 Defendant's conduct – including installing software programs for the purpose of  
6 anonymizing and shredding child pornography conduct, and then lying about his  
7 knowledge and searching behavior when speaking to law enforcement – demonstrates an  
8 almost-perfect example of consciousness of guilt, in addition to constituting a concerted  
9 and intentional effort to thwart law enforcement. In addition, the persistency of  
10 Defendant's conduct speaks to his inability to control his criminal sexual impulses and  
11 increases the likelihood of his recidivism. The profound sexual violence contained in the  
12 images that Defendant preferred speaks for itself.

13 But the Court should also consider other important factors present here. First, the  
14 specific kind of child pornography he sought out and collected included father-daughter  
15 incest—which is consistent with the conduct disclosed by his own daughter. A jury  
16 found him legally innocent of raping that child, but there is nothing that prevents this  
17 Court from coming to a conclusion that fairly jumps from the pages of his PSIR: his child  
18 pornography conduct in this case was consistent with her disclosures. Defendant also  
19 sought out, maintained, and bookmarked child rape stories, which is deeply troubling  
20 conduct, particularly for a person with now two convictions for child pornography. The  
21 title of one of them is simply chilling: “baby Sex Is the Best.tx.”

22 Of particular concern to the United States is Defendant's fanciful “Fish4Kids  
23 Foundation,” which he opened and “ran” under a pseudonym. This entire operation  
24 appears to have been designed to put him in in-person contact with children with autism  
25 or other developmental disabilities, a vulnerable population if ever there were one. As  
26 with his child pornography deletion conduct, the fact that he set up and ran this  
27 “foundation” under one of his pseudonyms demonstrates consciousness of guilt. If a  
28

1 parent tried to get to the bottom of “Fish4Kids,” that parent would find only “Erik James  
2 Parsons,” not Brian Knight. ECF No. 64, ¶ 17.

3 The stated goal of this “foundation” was to give aquariums to autistic children. *Id.*  
4 But by Defendant’s own admission, it *never gave a single aquarium to anyone*. For  
5 someone without Defendant’s sexual interest in children, that might be written off mere  
6 ineffectuality, based on a lack of ability or follow-through to run a successful foundation.  
7 But for someone with Defendant’s personal history and characteristics, it is difficult to  
8 come to any conclusion other than that “Fish4Kids” was a sham designed for the purpose  
9 of putting Defendant, a sex offender, around kids who might not be able to protect  
10 themselves from him. In the case of potential nonverbal autistic victims, they would not  
11 necessarily have been able to report misconduct. By any measure, this particular  
12 Defendant is not the federal child pornography offender whose conduct merits a sentence  
13 of only 36 or 60 months.

14 **B. Defendant’s Personal History and Characteristics**

15 Defendant’s personal history and characteristics do not absolve him of  
16 responsibility for his child exploitation. Defendant’s life has had challenges, to be sure,  
17 and the United States’ significantly-below-Guidelines sentence takes into account the  
18 mitigating factors set forth in the PSIR. The United States anticipates a defense  
19 sentencing position that will focus on Defendant’s physical ailments, while largely  
20 ignoring both the risk he poses to additional victims in the community and his recidivism.

21 The Court should of course consider Defendant’s mitigation. And it should  
22 balance out that information with the fact that not one of Defendant’s ailments kept him  
23 from engaging in repeated domestic violence conduct, including interfering with  
24 reporting, or engaging in cyberstalking that included significant threats against others – to  
25 say nothing of engaging in repeated child pornography conduct. Those ailments also did  
26 nothing to keep Defendant in compliance with sex offender treatment or his community  
27 sanctions. The cold, hard fact is that Defendant has demonstrated that he is a danger to  
28 the community, and he will continue to be, regardless of his ailments. Balancing

1 Defendant's mitigation with his criminal history and offense conduct, the United States  
2 urges the Court to give Defendant more than 10 years off the low end of his Guidelines—  
3 that is, impose a sentence of 84 months.

4 **C. Just Punishment**

5 Defendant's child exploitation conduct demands serious punishment, and the only  
6 mechanism for accountability is the sentence imposed by this Court. When someone  
7 violates the law repeatedly and egregiously – to say nothing of violating moral and  
8 ethical codes and the human law that adults are obliged to protect children from harm, not  
9 endanger them – justice demands that the person be punished significantly. Here, taking  
10 into account Defendant's substantive child pornography conduct, and apparent inability  
11 to stop engaging in it, regardless of a prior conviction and prison time, it is clear that a  
12 severe punishment is appropriate and necessary. 84 months (7 years) is sufficient, but not  
13 greater than necessary; any lower sentence would fail to meet the statutory goals of  
14 sentencing.

15 **D. Deterrence**

16 A significant sentence is also necessary to deter Defendant and others from  
17 engaging in additional child exploitation offenses. Only if people who have sexual  
18 interests in children know that they may go to federal prison for a long time will they be  
19 disincentivized from acting on their worst impulses. Defendant has demonstrated,  
20 through his repetitive and ongoing conduct, that specific deterrence is necessary here.

21 This Court's sentence must be long enough to make Defendant take it seriously; to  
22 deter him, his sentence has to be distasteful enough that when he gets out, he knows that  
23 the penalty for this kind of conduct is severe. It is clear that even his prior prison  
24 sentence did not have an appropriately deterrent impact.

25 General deterrence is also an important goal of sentencing. Child pornography  
26 enthusiasts in this District need to know that when they engage in this kind of conduct  
27 repeatedly, the consequences will include a lengthy term in federal prison. 84 months is  
28 sufficient, but not greater than necessary, to achieve these goals.

1           **E. Protection of the Public**

2       Children in the Eastern District and elsewhere deserve to live in a world in which  
3 they are safe from Internet predation, in any form. Defendant presents a danger to the  
4 community, and there is little question that he would still be endangering children if the  
5 FBI had not located him online. The question for this Court is stark: what sentence is  
6 necessary to protect the children of Eastern Washington and elsewhere from an adult who  
7 is so relentless about exploiting them and creating a market for their future abuse? The  
8 community depends on the Court to be its voice, and the community deserves a clear  
9 statement that child pornography recidivism cannot be tolerated in a just society.

10      The need to protect the public also justifies a lifetime of supervised release.  
11 Defendant has amply demonstrated throughout his adult life that he has little interest in  
12 complying with probation or supervision. Defendant has chafed under the yoke of  
13 community conditions, and that is part of the reason why he must be supervised forever.  
14 If he violates his supervision, the answer is simple: he will be returned to custody for  
15 breaching the Court's trust. Defendant has amply demonstrated that he requires  
16 supervision for the rest of his life.

17           **F. Avoidance of Unwarranted Sentencing Disparities**

18      The best way to ensure consistent sentences for similarly-situated defendants  
19 across the country is for courts to apply the sentencing Guidelines in the same manner  
20 everywhere. *United States v. Guerrero-Velasquez*, 434 F.3d 1193, 1195 n.1 (9th Cir.  
21 2006) (recognizing that the Guidelines "help to maintain uniformity in sentencing  
22 throughout the country"); *United States v. Boscarino*, 437 F.3d 634, 638 (7th Cir. 2006)  
23 ("Sentencing disparities are at their ebb when the Guidelines are followed, for the ranges  
24 are themselves designed to treat similar offenders similarly."). Here, the United States'  
25 recommendation takes into account Defendant's substantive child pornography conduct,  
26 past history, demonstrated lack of respect for the law, and blatant willingness to ignore  
27 court orders while on supervision. Still, based on his personal history and characteristics,  
28 the United States has recommended a below-Guidelines sentence. As this Court knows

1 all too well, the standard sentence in this District for this conduct is 60 months (5 years).  
2 Any sentence lower than that would surely create unwarranted sentencing disparity. To  
3 the contrary, the United States submits that Defendant's recidivism and criminal history  
4 warrant an additional two years in custody – which would still be more than a decade less  
5 than Defendant's actual Guidelines range.

6 **G. Fine, Special Penalty Assessment, Restitution, and Forfeiture**

7 The United States is free to make any recommendation concerning a criminal fine.  
8 The Probation Officer has analyzed Defendant's financial condition and has concluded  
9 that he does not have the financial means, assets, and/or resources available to reasonably  
10 make payment on financial obligations imposed by the Court. ECF No. 64, ¶ 97.  
11 Accordingly, the United States does not seek a fine. A \$100 special assessment is  
12 mandatory. The United States defers to the Court regarding Defendant's indigence and  
13 the applicability of the \$5,000 Special Assessment pursuant to the Justice for Victims of  
14 Trafficking Act of 2015 and the up-to-\$17,000 Special Assessment under the Amy,  
15 Vicky, and Andy Child Pornography Victim Assistance Act of 2018. Restitution of no  
16 less than \$3,000 per requesting victim is appropriate.

17 **V. Conclusion**

18 For the foregoing reasons, the United States recommends that the Court calculates  
19 Defendant's sentencing range at 210-240 months and imposes a sentence of 84 months (7  
20 years) in custody, to be followed by a lifetime of supervised release.

21 Dated: June 17, 2022

Vanessa R. Waldref  
United States Attorney

23 s/ David M. Herzog

24 David M. Herzog  
25 Assistant United States Attorney

1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that on June 17, 2022, I electronically filed the foregoing with the  
3 Clerk of the Court using the CM/ECF System, which will send notification of such filing  
4 to Defendant's counsel of record using the CM/ECF system.

5  
6                   *s/ David M. Herzog*  
7                   David M. Herzog  
8                   Assistant United States Attorney